REMARKS

The Office communication dated January 16, 2007 states,

> The amendment filed on the 23 October 2006 canceling all claims drawn to the elected invention presenting only claims to a non-elected invention is nonresponsive. See MPEP 821.03. There are no remaining claims that were originally presented currently pending.

Applicants believe the cited section of the MPEP does not completely control here.

Applicants kindly direct the Office to MPEP 706.07(h) VI (B), reproduced below for the Office's convenience.

> Presentation of claims for different invention - applicants cannot file an RCE to attain continued examination on the basis of claims that are independent or distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions). See 37 CFR 1.145. If an RCE is filed with an amendment canceling all claims drawn to the elected invention and presenting only claims drawn to a nonelected invention, the RCE should be treated as a proper but the amendment should not be entered. (Emphasis added).

Accordingly, Applicants respectfully submit that the RCE was proper, but that it is still possible to present claims directed to the elected invention.

To expedite prosecution, Applicants re-present claims 2-7 and 9-16 as new claims 37 through 50. Applicants believe that this new amendment to the application and the remarks provided below are now responsive to the Office communication dated January 16, 2007.

Applicants now respond to the last action on the merits (the Advisory Action dated April 6, 2006). The Advisory Action on page 2 states,

> Therefore, absent of any requirement or explanation within the claims as to how the message can be received by a device and an acknowledgment sent to the router when the device is not active on the network which includes the interpretation wherein the devices is offline and disconnected from the network, the claims are not in condition or allowance.

Applicants respond by amending original base claim 3, now new claim 37, and original base claim 10, now new claim 44; and provide the following remarks.

Applicants' new claim 37 recites, in part,

> for each message, the router determining a message type, the message type indicating a quality of service the router provides for delivery of the message;
> for each message, the router not waiting for an acknowledgment of receipt of the message if the determined message type indicates non-guaranteed delivery; and
> for each message, the router waiting for an acknowledgment of receipt of the message if the determined message type indicates guaranteed delivery.

Briefly, Applicants' new claim 37 first determines a message type of the message to be delivered. (Specification, page 17, lines 3 through 21). The message type of the message indicates the quality of service that Applicants' message router provides when delivering the message. *Id.* If the determined message type indicates the quality of service is non-guaranteed delivery, the message router then transmits the message and does not track whether the message is actually received. *Id.* That is, in this instance, it does not wait for an acknowledgment of receipt of the message. Consequently, for a message of this message type, the message router does not guarantee delivery.

If, on the other hand, a determined message type indicates the quality of service is guaranteed delivery, Applicants' claimed message router transmits the message and waits for an acknowledgment. *Id.* In this instance, because the message router does wait for an acknowledgment of receipt of the message, it does guarantee delivery.

Applicants' new claim 37, provides both guaranteed and non-guaranteed delivery of messages, and thus determines which type of delivery to provide, on a message by message basis, based on a message type. Moreover, with Applicants' claimed message router, which determines whether message delivery is guaranteed or not, end node devices are neither required to provide nor are they responsible for providing guaranteed delivery of messages by using, for example, a transport layer protocol, such as transmission control protocol (TCP) or user datagram protocol (UDP).

The distinction between Applicants' new claim 37 and NewNet is illustrated by comparing, for example, Applicants' FIG. 2C and NewNet's FIG. 3. In Applicants' FIG. 2C, at step 1018, Applicants' claimed message router, as recited in new claim 37, determines for each message to be delivered a message type. At step 1020, the Applicants' message router determines for each message to be delivered whether the determined message type indicates

guaranteed delivery. If, at step 1020, the determined message type does not indicate guaranteed delivery, the message is transmitted at step 1022. If, however, at step 1020, the determined message type does indicate guaranteed delivery, Applicants' message router transmits the message and waits for acknowledgement at step 1024.

In contrast, NewNet's FIG. 3 provides no step(s) correspond to Applicants' 'determining message type' (step 1018) and 'determining whether the determined message type indicates guaranteed delivery' (step 1020). Instead, NewNet at step 3 describes interrogating and receiving routing information needed to deliver a short message from an "SMSC" to a mobile subscriber. With routing information to the mobile subscriber known to the SMSC, the SMSC then at step 4 delivers the short message to the mobile subscriber.

As such, there is no indication in NewNet of either determining a message type or determining whether a determined message type indicates guaranteed delivery.

NewNet also mentions but without further description "internal processing" at step 3. However, Applicants respectfully submit NewNet's "internal processing" is not the same as Applicants' determining a message type and/or determining whether a determined message type indicates guaranteed delivery. Because NewNet asserts that a distinguishing characteristic of SMS is that it "guarantees delivery of short messages" and that, "service elements of [an SMS] network are designed to provide guaranteed delivery" (NewNet page 1, paragraphs 3 and 4, emphasis added), there is no need or purpose for the SMSC to determine for each message a message type and/or to determine for each message whether a message type indicates guaranteed delivery or not. With every short message inherently guaranteed to be delivered, it is redundant and unnecessary to have a step that determines for each short message whether delivery is guaranteed or not.

Moreover, Applicants respectfully submit there is not reason for NewNet to either expressly or inherently disclose a message type indicating a quality of service for delivery of a message when NewNet provides only one quality of service of delivery, viz., guaranteed delivery.

Accordingly, Applicants respectfully submit Applicants' new claim 37 of determining for each message, a message type indicating a quality of service a router provides for delivery of the

message is not the same as or even suggested by NewNet's method of guaranteeing delivery of every single message.

Even if NewNet described a message type indicating a quality of service for delivery of a message and determining for each message, a message type and determining whether the determined message type indicates guaranteed delivery, NewNet still would not teach all of the elements of Applicants' claim 37. The claim also requires, for each message, not waiting for an acknowledgment of receipt of the message if the determined message type indicates non-guaranteed delivery. Because in NewNet "a report is always returned to the SMSC either confirming the short message delivery to the handset or informing the SMSC of the short message delivery failure and identifying the reason for failure," (NewNet, page 6, second paragraph from bottom, emphasis added) Applicants respectfully submit it is consistent for the SMCS to always wait for such a report, and not optionally, as Applicants now claim. Furthermore, because the SMSC identifies temporary failures (NewNet, page 1, fourth paragraph), the SMSC must wait for acknowledgements in order to identify such failures.

Accordingly, Applicants respectfully submit that the NewNet reference neither teaches nor suggests each and every element of Applicants' claim 37. As such, Applicants respectfully submit Applicants' claim 37 should be allowed.

Independent base claims 37 and 44 recite similar limitations; as such Applicants respectfully submit 44 should also be allowed for similar reasons.

Claims 38-43 depend from claim 37 and claims 45-50 depend from claim 44; as such, Applicants respectfully submit these claims should also be allowed for the same reasons.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims pending after entry of this amendment (37-50) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite the Examiner is invited to call the undersigned.

Respectfully submitted,

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